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No. _____

In The Supreme Court of the United States

SIDNEY COAL CO., *et al.*,

Petitioners,

v.

SOCIAL SECURITY ADMINISTRATION, *et al.*,

Respondents.

On Petition for Writ of Certiorari to the United States Court of Appeals for the Sixth Circuit

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PETITION FOR WRIT OF CERTIORARI

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QUESTION PRESENTED

The Coal Industry Retiree Health Benefit Act of 1992, 26 U.S.C. §§ 9701-9722, directed the Commissioner of Social Security to assign newly created statutory health benefit liability to a former employer of each coal retiree as prescribed in liability assignment rules laid out in section 9706(a)(1)-(3). 26 U.S.C. § 9706(a)(1)-(3). In *Eastern Enterprises v. Apfel*, 524 U.S. 498 (1998), the Court held that the assignment of liability under section 9706(a)(3) was unconstitutional as applied to a former employer that did not sign a 1974 or later coal wage agreement.

The question presented is whether, in the wake of *Eastern Enterprises*, the Commissioner may invoke retroactivity principles developed in cases such as *Harper v. Virginia Dep't of Taxation*, 509 U.S. 86 (1993), to reassign to Petitioners the financial liability that the Court held could not constitutionally be imposed on Eastern Enterprises or another pre-1974 signatory employer, where the 1992 Congress demonstrably intended to shield Petitioners from liability for these particular retirees, and subsequent Congresses have never amended the precise liability assignment powers conferred to the Commissioner in the 1992 enabling legislation.

PARTIES TO PROCEEDING AND RULE 29.6 STATEMENT

Petitioners in this case are Sidney Coal Company, Inc., Martin County Coal Corporation, New Ridge Mining Company, A.T. Massey Coal Company, Inc., Road Fork Development Company, Inc., Rawl Sales & Processing Co., Tennessee Consolidated Coal Company, Omar Mining Company, and Peerless Eagle Coal Co., Inc. The Petitioners were plaintiffs-appellees below.

Massey Energy Company (NYSE:MEE) is the parent of Petitioner A.T. Massey Coal Company, Inc. and the ultimate parent corporation of Petitioners Sidney Coal Company, Inc., Martin County Coal Corporation, New Ridge Mining Company, Road Fork Development Company, Inc., Rawl Sales & Processing Co., Tennessee Consolidated Coal Company, Omar Mining Company, and Peerless Eagle Coal Co., Inc.

The Respondents, defendants-appellants below, are Jo Anne B. Barnhart, in her capacity as Commissioner of the Social Security Administration; Michael H. Holland, Elliot Segal, Thomas O.S. Rand, Carl E. Van Horn, Gail R. Wilensky, William P. Hobgood, and Marty D. Hudson, in their capacity as trustees of the United Mine Workers of America Combined Benefit Fund; and the United Mine Workers of America Combined Benefit Fund.

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Sidney Coal Company, Inc., Martin County Coal Corporation, New Ridge Mining Company, A.T. Massey Coal Company, Inc., Road Fork Development Company, Inc., Rawl Sales & Processing Co., Tennessee Consolidated Coal Company, Omar Mining Company, and Peerless Eagle Coal Co., Inc., by their undersigned counsel, respectfully petition for a Writ of Certiorari to review the judgment of the United States Court of Appeals for the Sixth Circuit in this case.

OPINIONS BELOW

The opinion of the United States Court of Appeals for the Sixth Circuit is reported at 427 F.3d 336 and is reprinted in the Appendix ("App.") hereto at 1a-32a. The

Memorandum Opinion and Order of the United States District Court for the Eastern District of Kentucky is reported at 221 F. Supp. 2d 755 and is reprinted in the Appendix hereto at 33a-87a.

JURISDICTION

The judgment of the court of appeals was entered on October 19, 2005. The jurisdiction of this Court is invoked under 28 U.S.C. § 1254(1).

STATUTORY PROVISIONS INVOLVED

The Coal Industry Retiree Health Benefit Act of 1992, which was enacted as part of the Energy Policy Act of 1992, Pub. L. No. 102-456, 106 Stat. 2776, 3036-3056, and (codified as an amendment (subtitle J)) to the Internal Revenue Code at 26 U.S.C. §§ 9701-9722), provides in pertinent part:

§ 9706. Assignment of eligible beneficiaries

(a) In general.—For purposes of this chapter, the Commissioner of Social Security shall, before October 1, 1993, assign each coal industry retiree who is an eligible beneficiary to a signatory operator which (or any other related person with respect to which) remains in business in the following order:

(1) First, to the signatory operator which–

(A) was a signatory to the 1978 coal wage agreement or any subsequent coal wage agreement, and

(B) was the most recent signatory operator to employ the coal industry retiree in the coal industry for at least 2 years.

(2) Second, if the retiree is not assigned under paragraph (1), to the signatory operator which–

(A) was a signatory to the 1978 coal wage agreement or any subsequent coal wage agreement, and

(B) was the most recent signatory operator to employ the coal industry retiree in the coal industry.

(3) Third, if the retiree is not assigned under paragraph (1) or (2), to the signatory operator which employed the coal industry retiree in the coal industry for a longer period of time than any oth signatory operator prior to the effective date of the 1978 coal wage agreement.

(b) Rules relating to employment and reassignment upon purchase.–For purposes of subsection (a)–

(1) Aggregation rules.–

(A) Related person.–Any employment of a coal industry retiree in the coal industry by a signatory operator shall be treated as employment by any related persons to such operator.